

# **ATTACHMENT 5**

**PUBLIC COMMENTS SUBMITTED TO THE OFFICE OF THE  
COMMISSIONER OF INSURANCE**



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

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## Public Comment Period

The Office of the Commissioner of Insurance (OCI) held a public comment period from March 14, 2018 to April 14, 2018. OCI press releases announcing the public hearings mentioned the public comment period and offered an e-mail address for individuals to submit written comments. That e-mail address, [OCI1332WaiverComments@Wisconsin.gov](mailto:OCI1332WaiverComments@Wisconsin.gov), was also posted to the OCI Web site.

Individuals and entities submitting written comments are included in this attachment, as well as their specific correspondence.

In summary, a majority of the comments received were supportive in nature. The few comments opposing the proposal either referred to issues that fell outside the scope of the proposal or were based on an inaccurate understanding of the proposal. Re-occurring points made by those entities submitting opposing comments are listed below, along with the OCI's rationale for determining no additional edits to the proposal are necessary to address those issues.

### Opposing Argument

- The WIHSP only benefits individuals who do not currently receive a federal subsidy.

### OCI Rationale

- Operationalizing the ACA has resulted in: approximately \$400 million in insurer losses over the past three years; unaffordable rate increases; limited plan designs; and insurers consistently leaving the market or reducing service areas. This market volatility has left consumers with unaffordable and dwindling plan options. For example, during the 2018 open enrollment period, approximately 75,000 enrollees were forced to choose a new insurer and thousands of consumers overall had only one or two insurer options in counties previously having three or more. Rate increases averaged over 40% across the state and in some areas were as high as 105%; and were justified using ACA rate review requirements.
- The ACA has created a volatile and uncertain individual marketplace. It is no longer a prediction that insurers will leave the market due to the ACA. As noted above, many have now left or reduced their services areas, resulting in several counties having one insurer option during the 2018 open enrollment period. Action needs to be taken to help the market recover. Creating a state based reinsurance program is a strong, positive step that can be achieved for the 2019 plan year. No one has pointed to the WIHSP as a silver bullet solution to all things impacting the market; however, it is a key piece of the solution to most immediately add stability to the market. **In addition to helping those individuals who do not qualify for subsidies and experienced double and even triple digit premium increases this year, the reinsurance program will help the condition of the broader market.**
- If no steps are taken and the state sits, as these comments suggest, until the government or some other entity can find a single solution to every ACA problem inflicted on the marketplace, insurers will continue to leave the market and consumers will have no access to an insurer in the individual market. As has been repeated throughout this very open and transparent waiver process, the ACA has resulted in numerous counties having one insurer available and consumers in those counties having one choice and no opportunity to compare benefits or provider networks. WIHSP offers a means for getting the Wisconsin individual market on a path toward stabilization.

### **Opposing Argument**

- Cannot support the Wisconsin Healthcare Stability Plan (WIHSP) because it will harm individuals receiving Medicaid.

### **OCI Rationale**

- The WIHSP was created by 2017 WI Act 138, contingent upon federal approval of a 1332 Waiver request. Act 138 funds the state portion of WIHSP through a sum sufficient general purpose revenue (GPR) appropriation. The WIHSP is not funded with Medicaid dollars and is not tied to Medicaid in any way. Funding for WIHSP does not rely on a surplus or lapse from any other program or appropriation. Like other programs supported by GPR, the program is funded unless the Legislature changes the law to modify funding for the program.
- 2017 WI Act 138 is included in the application as attachment 2.

### **Opposing Argument**

- Cannot support a proposal where the estimated savings is not required to be passed along to consumers. No mechanism is proposed to ensure savings are passed along.

### **OCI Rationale**

- Insurers are required to file their rates with OCI prior to each plan year and have them reviewed in accordance with federal law. When setting their rates for the 2019 plan year, insurers must account for the fact that a portion of their risk will be offset by the reinsurance program. Supporting information is filed and reviewed by OCI. Additionally, 2017 Act 138 requires insurers to file two sets of rates; one assuming participation in the reinsurance program and the other assuming no program is in place. That second set of rates will be used for comparison purposes and not used in setting plan premiums for the upcoming plan year.
- Savings generated through WIHSP are realized at the consumer level through rates charged for the insurance plans. For the 2019 plan year, Wakely estimates a 10.6% decrease in rates from levels that otherwise would have occurred, resulting in a 5% decrease in rates compared to 2018. Insurers cannot participate in WIHSP if they do not demonstrate a reduction in their rate filing directly tied to WIHSP, per Act 138.

### **Opposing Argument**

- The WIHSP does nothing to address rising health care costs.

### **OCI Rationale**

- WIHSP is not designed to address the cost of health care. It is designed to help manage the cost of insurance coverage that pays for those health care costs. The 1332 Waiver application does not assert to address the cost of health care.

### **Opposing Argument**

- WIHSP does not defray the cost of deductibles, co-insurance and co-pays, harming their (groups commenting) respective membership.

### **OCI Rationale**

- WIHSP does not impact cost-sharing. Plan design falls outside the scope of the 1332 waiver application. All ACA requirements around plan design, including allowable cost sharing provisions, are retained and not impacted by the 1332 waiver application.
- The ACA requires plans offered on and off the Exchange to fall into a metal tier of bronze, silver, gold, or platinum. Each metal tier has an actuarial value tied to it, per federal law. The WIHSP does not impact required actuarial values insurance plans must meet as a condition of being offered in the individual market.



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
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Web Address: [oci.wi.gov](http://oci.wi.gov)

## Individuals and Entities Submitting Written Comments

### Comments in Support

Common Ground Healthcare Cooperative  
Network Health  
Wisconsin Hospital Association  
Quartz  
National Multiple Sclerosis Society  
AHIP  
Wisconsin Association of Health Plans  
Security Health Plan & Marshfield Clinic Health System  
American Cancer Society Cancer Action Network  
Wisconsin Medical Society

### Comments in Opposition

Wisconsin Alliance for Women's Health  
Kids Forward  
Wisconsin Board for People with Developmental Disabilities  
ABC for Health

### General Comments

Gerry Paul, Public Member  
Douglas Smith, Public Member  
Mark Geissler, Public Member



April 13, 2018

JP Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
PO Box 7873  
Madison, WI 53707-7873

**Re: Support for Wisconsin's 1332 Waiver Application**

*Sent via email to: [OCI1332WaiverComments@wisconsin.gov](mailto:OCI1332WaiverComments@wisconsin.gov)*

Dear JP:

On behalf of nearly 60,000 members of Common Ground Healthcare Cooperative (CGHC), I write to express support for Wisconsin's 1332 Waiver which would establish a reinsurance program for issuers in Wisconsin as a means to stabilize Wisconsin's insurance market.

CGHC is a nonprofit health insurance cooperative that is governed by individuals and small employers receiving health insurance coverage through our organization. We have served Wisconsin's individual market since 2014 and have experienced first-hand the impact of law changes, rule changes and funding changes that have combined to create an instable market for insurers and consumers alike. We strongly support Wisconsin's effort to stabilize its market through a reinsurance program that will have a positive impact on premiums for consumers, particularly those that have suffered high premium increases resulting from the volatility of the market.

Our primary concern is for our members; a core tenant of our mission is to ensure Wisconsin consumers continue to have access to health insurance. Our support for the 1332 Waiver proposal is provided in the spirit of that mission – to protect the interests of our members and other consumers in the state of Wisconsin.

We appreciate the opportunity to provide comments. If you have any questions or would like to discuss these suggestions further, please do not hesitate to contact me.

Sincerely,

Cathy Mahaffey  
CEO, Common Ground Healthcare Cooperative



1570 Midway Pl.  
Menasha, WI 54952

April 13, 2018

Office of the Commissioner of Insurance  
J.P. Wieske, Deputy Commissioner of Insurance  
125 S. Webster Street  
Madison, WI 53703

RE: Wisconsin Draft 1332 Waiver

Dear Deputy Commissioner Wieske:

Network Health appreciates the opportunity to comment on Wisconsin's Section 1332 waiver application, and appreciates the time and effort the Office of the Commissioner of Insurance (OCI), the Governor's Office and the State Legislature have put into developing an expedient pathway towards stability in Wisconsin's individual insurance market. For plan year 2019, it is estimated that Wisconsin's program will offset 50 to 60 percent of claims for members with costs between \$50,000 and \$250,000. Network Health supports an individual market reinsurance program.

Network Health is dedicated to serving our neighbors and providing access to affordable health insurance coverage. As a Qualified Health Plan on the Exchange, we maintain a strong commitment to our communities and to ensuring stability in Wisconsin's individual marketplace.

Health insurance premiums are reflective of market rules, the cost of care and the amount of health care used. We appreciate OCI providing the 50 percent reinsurance estimate on the April 12, 2018 waiver update call. With clear guidance on the co-insurance funding percentage insurers are equipped to set sound premiums for 2019.

The reinsurance program is a strong first step towards promoting an affordable, stable market for Wisconsin's Exchange consumers. Network Health looks forward to partnering and supporting OCI with regard to waiver implementation. We are committed to working to ensure that the program has maximum positive impact for consumers on Wisconsin's health insurance Exchange.

Network Health remains committed to maintaining consumer choice, stabilizing the market and providing affordable coverage options. We look forward to continuing a collaborative, transparent process with OCI as we prepare for the 2019 Open Enrollment Period. Please contact Elizabeth Benz, Vice President of Government Programs, at [Ebentz@networkhealth.com](mailto:Ebentz@networkhealth.com) with any questions.

Sincerely,



Coreen Dicus-Johnson, JD  
President & CEO

HMO plans underwritten by Network Health Plan. POS plans underwritten by Network Health Insurance Corporation or Network Health Insurance Corporation and Network Health Plan.

networkhealth.com

## WISCONSIN HOSPITAL ASSOCIATION, INC.



April 13, 2018

TO: JP Wieske, Deputy Commissioner  
FROM: Eric Borgerding, President & CEO, Wisconsin Hospital Association  
RE: 1332 Draft Waiver Application: Reinsurance Program

The Wisconsin Hospital Association (WHA) believes all Wisconsin residents should have access to high-quality, affordable health insurance, and that action is necessary at the state level to mitigate premium increases and ensure choice and affordability in the individual market. WHA believes the State's 1332 waiver application to establish a reinsurance program is a logical first step to encourage market stability and sustain our recent gains in coverage expansion.

As you know, Wisconsin's hospitals and health systems are on the front lines of providing high quality care every day, from our large urban communities to small rural areas so vital to our state, and everywhere in between. In 2013, as the nation was gearing up for the implementation of the health insurance exchange and the significant changes to the health care markets as a result of the Affordable Care Act (ACA), Wisconsin's hospitals and health systems stepped up as well. We worked with the Office of the Commissioner of Insurance (OCI), the Department of Health Services, Governor Walker and with many state lawmakers to help our Wisconsin residents sign up for health care coverage through either the insurance exchange or Wisconsin's version of Medicaid expansion. Regardless of ideology, Wisconsinites are united in the belief that everyone should have access to high quality, affordable health care coverage. Indeed, Wisconsin's uninsured rate has been cut by 42% since then – a laudable achievement for which we should all be proud.

Now, five years later, we are seeing troubling signs in the individual market, including insurers exiting the market, and premiums increasing (on average) 36 percent for 2018. WHA vigorously engaged with our federal elected officials over the past year as debate about the repeal and replacement of the ACA ebbed and flowed in Washington, DC, and we were disappointed and frustrated when nothing was done to address states' concerns. It is clear that action is required at the state level to mitigate premium increases and ensure choice and affordability for the individual market.

We support using the tools available under the ACA to put forward a plan aimed at stabilizing premiums, increasing competition in the insurance market and sustaining coverage gains for the foreseeable future or until the ACA is repaired or replaced. Therefore, we respectfully submit our support for the State's waiver application to establish a reinsurance program. WHA looks forward to partnering with OCI on the eventual implementation, as well as engaging in discussions to develop longer-term solutions to ensure market stability and maintaining insurance coverage for Wisconsin residents.

Sincerely,

A handwritten signature in black ink that reads 'Eric Borgerding'. The signature is written in a cursive style with a prominent initial 'E'.

Eric Borgerding  
President/CEO

# Quartz

April 12, 2018

J.P. Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
PO Box 7873  
Madison, WI 53707-7873

Dear Mr. Wieske,

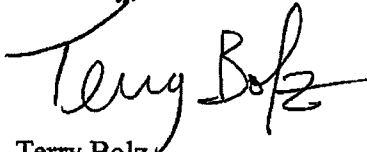
On behalf of Quartz, I write in strong support of Wisconsin's Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (PPACA) to develop and implement the Wisconsin Health Care Stability Plan (WIHSP) reinsurance program.

Wisconsin's individual market has been reshaped in recent years – the loss of federal Cost Sharing Reduction (CSR) payments and shifts in the risk pool towards higher-cost individuals has led to unsustainable premium increases Statewide. While many individual market consumers receive federal tax credits that insulate them from rate increases, thousands of consumers without federally funded Advance Premium Tax Credits (APTCs) for premium support have exited the individual market. The loss of traditionally healthier consumers from the individual market further risks the stability of the individual market.

If approved, Wisconsin's \$200 million reinsurance program will give Quartz and other community-based health plans the support needed to mitigate the effect of high-cost claims, slow the growth in premiums, incentivize members to remain in or rejoin the individual market and bring much needed stability and predictability to Wisconsin's individual market.

Quartz appreciates the work Office the Commissioner of Insurance (OCI) has taken to prepare and advance the 1332 waiver application and encourages the timely review and approval of the waiver by Centers for Medicare & Medicaid Services (CMS).

Sincerely,



Terry Bolz  
President and CEO





April 12, 2018

Office of the Commissioner of Insurance  
125 South Webster Street  
Madison, WI 53707

Dear Commissioner Ted Nickel,

The National Multiple Sclerosis Society (Society) appreciates the opportunity to submit comments on Wisconsin's 1332 Draft Waiver for State Innovation Application, pursuant to 2017 Wisconsin Act 138, allowing the state to leverage federal funding to create a reinsurance mechanism for insurers operating in Wisconsin. The Society supports Wisconsin's 1332 Waiver proposal.

Multiple sclerosis is an unpredictable, often disabling disease of the central nervous system that disrupts the flow of information within the brain, and between the brain and body. Symptoms range from numbness and tingling to blindness and paralysis. The progress, severity and specific symptoms of MS in any one person cannot yet be predicted, but advances in research and treatment are leading to better understanding and moving us closer to a world free of MS.

Since 2014, the Affordable Care Act (ACA) health insurance marketplace has been an extremely important avenue to affordable, quality coverage for uninsured people living with MS. Affordable plans ensure patients are able to access needed care in a timely manner from an experienced provider without undue financial burden.

However, ACA insurance premiums are rising, and the Society is committed to ensuring that people living with MS have access to comprehensive health insurance plans with affordable

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National  
Multiple Sclerosis  
Society

premiums, deductibles, and out-of-pocket costs. Without market stabilization measures such as reinsurance, the many citizens of Wisconsin—including 6-8% of people living with MS—currently relying on the marketplace could lose their only affordable option for health insurance. The Society supports Wisconsin’s 1332 Waiver proposal because it would increase the affordability of insurance plans in Wisconsin’s individual market. However, while we strongly support reinsurance to help stabilize the individual market, stabilization funds should never be used to re-establish high risk pools that often had waiting lists, high premiums and deductibles, limited benefits, and insufficient numbers of needed specialists available in their networks.

Beyond the draft waiver in its current form, we believe that it would be appropriate for the state to consider pursuing strong enrollment incentives to further lower costs and avoid the perils of adverse selection in the wake of Congress repealing the ACA’s individual mandate. Such enrollment incentives could take the form of automatic enrollment for eligible individuals, or tax incentives for individuals who maintain continuous coverage, among other options. Robust outreach to encourage individuals to sign up for ACA plans is another effective tool to stabilize the risk pool and increase affordability.

The Society believes that improving the stability of the individual market is of the utmost importance because it provides access to plans that cover essential health benefits, prohibits discrimination based on pre-existing conditions, and caps what enrollees pay out-of-pocket, in addition to other critical patient protections provided by the ACA. Reducing premiums for individual market insurance plans through reinsurance, and maintaining robust coverage numbers through strong enrollment incentives, are first-line strategies that Wisconsin should pursue to improve the stability of its individual insurance market. The Society applauds the State of

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National  
Multiple Sclerosis  
Society

Wisconsin for taking the first steps by establishing a reinsurance mechanism. For further information, please contact Jessalyn Hampton, Sr. Manager of Advocacy, at [Jessalyn.hampton@nmss.org](mailto:Jessalyn.hampton@nmss.org) or 303-698-5431.

Respectfully,

The National MS Society, Wisconsin

CC:

Office of Governor Scott Walker

Senator Vukmir, Chair of Senate Health and Human Services Committee

Senator Darling, Chair of Senate Finance Committee

Senator Craig, Chair of Senate Insurance, Financial Services, Constitution, and Federalism Committee

Representative Sanfelippo, Chair of Assembly Health Committee

Representative Nygren, Chair of Assembly Finance Committee

Representative Petersen, Chair of Assembly Insurance Committee

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Marilyn Tavenner  
President &  
Chief Executive Officer



April 13, 2018

JP Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, WI 53707-7873

Dear Deputy Commissioner Wieske:

I write today on behalf of America's Health Insurance Plans (AHIP) to express our support for the Wisconsin OCI 1332 waiver proposal for a State Innovation Application.

America's Health Insurance Plans (AHIP) is the national association representing health insurance plans. Our members provide health and supplemental benefits to the American people through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

Because health insurance markets are inherently local, we support the federal 1332 waiver option for states to develop state-specific solutions to state-specific health insurance challenges. We also believe that proposals for 1332 waivers should explore solutions to increase consumer choice and reduce costs while ensuring consumers in that specific state have access to coverage. States that utilize a 1332 waiver should consider how to implement that waiver in a manner that minimizes disruption for individuals who purchase coverage in that state.

The Wisconsin Office of the Commissioner of Insurance has thoroughly engaged with a wide variety of stakeholders, including health plans doing business in Wisconsin and the Wisconsin 1332 waiver application reflects thoughtful consideration of input provided by stakeholders, including health plans and others, on how to best stabilize the Wisconsin market.

The Wisconsin Healthcare Stability Plan seeks to establish a \$200 million state-based reinsurance program to stabilize rates for individual health insurance plans and provide greater financial certainty to consumers. We believe the proposal will allow health plans to continue offering more affordable products in the individual market leading, to increased competition and more affordable health plan options for Wisconsin residents.

We appreciate the opportunity to provide comments, and we look forward to working with you to ensure consumers have access to quality, affordable coverage and care for years to come.

Sincerely,

A handwritten signature in blue ink that reads "Marilyn B. Tavenner".

Marilyn B. Tavenner  
President and CEO

601 Pennsylvania Avenue, NW  
South Building  
Suite Five Hundred  
Washington, DC 20004  
202.778.3200

## **Stegall, Jennifer - OCI**

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**From:** Kelsey Avery <Kelsey@wihealthplans.org>  
**Sent:** Friday, April 13, 2018 10:56 AM  
**To:** OCI 1332 Waiver Comments  
**Cc:** Wieske, JP - OCI; Stegall, Jennifer - OCI; Hizmi, Elizabeth - OCI  
**Subject:** Reinsurance Comment Letter  
**Attachments:** Reinsurance Comment Letter.pdf

Good morning:

The Wisconsin Association of Health Plans appreciates the opportunity to comment on Wisconsin's Section 1332 waiver application to establish an individual market reinsurance program. Wisconsin's community-based health plans support a reinsurance program, and appreciate the efforts by Governor Scott Walker, the Legislature, and the Office of the Commissioner of Insurance (OCI) to act quickly to impact premiums for plan year 2019.

Wisconsin's community-based health plans look forward to partnering with OCI during administrative rulemaking and program implementation to help consumers who purchase Qualified Health Plans in Wisconsin.

Please do not hesitate to contact me with any questions.

Thanks,

Kelsey Avery  
Director of Public Policy and Communications  
Wisconsin Association of Health Plans  
[kelsey@wihealthplans.org](mailto:kelsey@wihealthplans.org)  
(608) 255-8761

# *Wisconsin Association of Health Plans*

*The Voice of Wisconsin's Community-Based Health Plans*

April 13, 2018

TO: Office of the Commissioner of Insurance  
J.P. Wieske, Deputy Commissioner of Insurance

FR: Wisconsin Association of Health Plans  
Nancy J. Wenzel, Chief Executive Officer  
Kelsey Avery, Director of Public Policy & Communications

RE: Wisconsin Draft 1332 Waiver

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The Wisconsin Association of Health Plans appreciates the opportunity to comment on Wisconsin's Section 1332 waiver application to establish an individual market reinsurance program. For plan year 2019, Wisconsin's program is estimated to offset 50 to 60 percent of claims for members with costs between \$50,000 and \$250,000. Wisconsin's community-based health plans support a reinsurance program, and appreciate the efforts by Governor Scott Walker, the Legislature, and the Office of the Commissioner of Insurance (OCI) to act quickly to impact premiums for plan year 2019.

Community-based health plans are committed to serving their neighbors, providing access to affordable health insurance coverage, and supporting efforts that promote a stable individual market. Many of Wisconsin's community-based health plans have offered coverage through the federal Exchange every year since its inception. Today, community-based health plans make up the majority of insurers still serving Wisconsin consumers in the Exchange.

Qualified Health Plan premiums are reflective of market rules, the cost of care, and the amount of health care used. Health plans have worked to adjust to the many changes in individual market rules and consumer health risk; however, premiums have increased to keep pace with costs. Reinsurance can help mitigate some of the financial impact of these costs.

In the absence of other policy changes that affect rates, reinsurance can help make premiums more stable from year to year. A reinsurance program can alleviate some – but not all – of the upward pressure on individual market premiums. Similar programs in other states have resulted in smaller premium increases than there would have been without a reinsurance program.

More than 200,000 Wisconsin residents rely on the individual market for comprehensive health insurance coverage. Wisconsin's community-based health plans believe a reinsurance program is an important step toward promoting an affordable, stable market for these consumers.

Wisconsin's community-based health plans look forward to partnering with OCI during administrative rulemaking and program implementation to help consumers who purchase Qualified Health Plans in Wisconsin. Please do not hesitate to contact Kelsey Avery at [kelsey@wihealthplans.org](mailto:kelsey@wihealthplans.org) with any questions.

**TO:** J.P. Wieske, Deputy Commissioner  
**Wisconsin Office of the Commissioner of Insurance**

**FROM:** Marty Anderson, Chief Marketing Officer  
**Security Health Plan**  
Ryan Natzke, Chief External Affairs Officer  
**Marshfield Clinic Health System**

**DATE:** April 2, 2018

**SUBJECT:** Wisconsin 1332 Reinsurance Waiver Application

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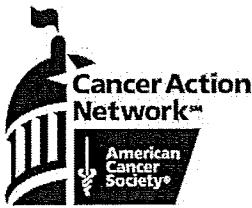
The following comments are provided in regards to the 1332 waiver to establish a reinsurance program for the Affordable Care Act (ACA) individual and family market in the state of Wisconsin. Security Health Plan and Marshfield Clinic Health System strongly support this application to the Centers for Medicare and Medicaid Services. Our service territory covers central, northern and western Wisconsin. These are some of the most rural areas of the state and our customers tend to be some of the poorest and sickest. The affordability of health care and insurance is of critical importance to the people we serve.

Governor Scott Walker proposed, as part of his “Health Care Sustainability” plan, a state-based reinsurance program (Assembly Bill 885/Senate Bill 770) to stabilize the ACA individual market. Because the federal government has not acted on a broader healthcare reform bill to address stabilizing the non-group insurance market, these individuals, many of whom are either lower income, early retirees or small business owners, have seen an average premium increase of more than 40 percent in 2018. These increases impacted rates for enrollees both on and off the federal Marketplace.

A state-based reinsurance program does not address the root causes of the rising costs of health care, but it is the best stabilization program that Wisconsin can implement in the short term to have a significant impact on rates for 2019 and beyond. Reinsurance lowers premiums by spreading risk in a way that benefits all of the members of the risk pool (enrollees both on and off the federal Marketplace). This is why other states that have adopted similar programs have experienced sizeable rate reductions in their 2018 premiums. Alaska and Minnesota, two states that have established similar reinsurance programs, have seen upwards of a 20 percent rate reduction for 2018 premiums over what they otherwise would have been without the program.

For Security Health Plan, only 3 percent of enrollees (or approximately 1,000 residents) would fall into this program, but they account for 25 percent of total costs. Security Health Plan estimates that if this program had been in place for 2018, our 32 percent average rate increase would have been held to a far more reasonable 9.5 percent rate increase for enrollees. For 2019, depending on the reinsurance recovery percentage, we would estimate that the reinsurance program could reduce premiums by up to 15 percent over what they otherwise would be.

As one of the largest carriers that continues to sell ACA individual products in Wisconsin, we believe the implementation of a state-based reinsurance program is crucial to maintaining the affordability of health insurance for our members. Having affordable insurance available in our part of the state helps our local economy by allowing these individuals and families to spend the money they save on other items, helping to promote economic activity.



via electronic submission

April 13, 2018

JP Wieske  
Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, WI 53707-7873

**Re: ACS CAN's Comments on Proposed 1332 Waiver**

Dear Deputy Commissioner Wieske:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the request for comment on the Wisconsin Office of the Commissioner of Insurance's 1332 waiver proposal. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

ACS CAN supports a robust marketplace from which consumers can choose a health plan that best meets their needs. Access to health care is paramount for persons with cancer and survivors. In the United States, there are more than 1.7 million Americans who will be diagnosed with cancer this year.<sup>1</sup> An additional 15.5 million Americans are living with a history of cancer.<sup>2</sup> In Wisconsin alone, an estimated 33,340 Wisconsinites are expected to be diagnosed with cancer this year<sup>3</sup> and another 288,410 Wisconsinites are cancer survivors.<sup>4</sup> For these Americans access to affordable health insurance is a matter of life or death. Research from the American Cancer Society has shown that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.<sup>5</sup>

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<sup>1</sup> American Cancer Society. Cancer Facts & Figures: 2018. Atlanta: American Cancer Society, 2018.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> American Cancer Society. Cancer Treatment & Survivorship: Facts & Figures 2016-2017. Atlanta: American Cancer Society, 2016.

<sup>5</sup> E Ward et al, "Association of Insurance with Cancer Care Utilization and Outcomes, CA: A Cancer Journal for Clinicians 58:1 (Jan./Feb. 2008), <http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care>.



ACS CAN supports the state's proposed 1332 waiver which would implement a state reinsurance program. A well-designed reinsurance program can help to lower premiums and mitigate plan risk associated with high-cost enrollees. We note that the Wisconsin Office of the Commissioner of Insurance estimates that the proposed reinsurance program will reduce premiums by 10.1 percent in 2019, 9.6 percent in 2020, 9.1 percent in 2021, and 6.5 to 8.7 percent in the years between 2020 and 2028.<sup>6</sup> These savings will not only benefit the federal government through reduced subsidy payments (an estimated \$170 million over 10 years), but will also benefit consumers not eligible for subsidies who enroll in coverage through the exchange.

A reinsurance program may also encourage insurance carriers to continue offering plans through the exchange, or begin to offer plans as applicable. This maintenance or increase in plan competition also may help to keep premiums from rising. These premium savings could help cancer patients and survivors afford health insurance coverage, and may allow some individuals to enroll who previously could not afford coverage.

ACS CAN believes that patient protections in current law – like the prohibition on pre-existing condition exclusions, lifetime and annual limits, and Essential Health Benefits requirements – are crucial to making the healthcare system work for cancer patients and survivors. We are pleased that Wisconsin's 1332 waiver application does not propose to alter any key patient protections, and specifically states the waiver "will not affect covered benefits for Wisconsinites ... all Wisconsin-compliant plans will be required to provide coverage of essential health benefits."<sup>7</sup>

### Conclusion

On behalf of the American Cancer Society Cancer Action Network we thank you for the opportunity to comment on the proposed section 1332 waiver, which we believe will provide long-term viability of the individual market while not eroding important consumer protections. If you have any questions, please feel free to contact me at [sara.sahli@cancer.org](mailto:sara.sahli@cancer.org) or 608.662.7557.

Sincerely,



Sara Sahli  
Wisconsin Government Relations Director  
American Cancer Society Cancer Action Network

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<sup>6</sup> Wisconsin Office of the Commissioner of Insurance. Wisconsin 1332 Draft Waiver Application. March 13, 2018.

<sup>7</sup> *Id.*



# Wisconsin Medical Society

April 10, 2018

Deputy Commissioner JP Wieske  
Office of the Commissioner of Insurance  
125 South Webster Street  
Madison, WI 53707  
RE: Wisconsin 1332 Draft Waiver Application

Dear Deputy Commissioner Wieske:

Comprised of more than 12,500 physicians, residents and medical students, the Wisconsin Medical Society (Society) is the largest association of medical doctors in Wisconsin. It is our mission to improve the health of the people of Wisconsin by supporting and strengthening physicians' ability to practice high-quality patient care in a changing environment. The Wisconsin Healthcare Stability Plan (WIHSP) supports this mission by helping Wisconsin's patients maintain access to high quality care at affordable levels. The Society supports the implementation of the reinsurance program under WIHSP as it will help lower premiums for Wisconsin's patients while maintaining a healthy marketplace.

Working to manage the health care costs of Wisconsin's patients and maintaining network adequacy are stated principles of the Society's Health System Reform Objectives (attached). Such efforts pertain to office visits and prescribed treatments, but also extend to out-of-pocket costs associated with insurance premiums, co-insurance, and coverage requirements. Oftentimes, it is the out-of-pocket costs that can have adverse effects on Wisconsin's patients, forcing them to make difficult decisions about their health care.

In 2018, Wisconsin's premiums for plans offered on the Affordable Care Act (ACA) exchange increased 36 percent on average.<sup>1</sup> According to an analysis performed by Wakely Consulting Group and estimates from the Office of the Commissioner of Insurance (OCI), the average premium for all exchange participants is expected to be 42 percent higher in 2018 compared to 2017.<sup>2</sup> Along with premium concerns, rising out-of-pocket costs are also adversely affecting many patients, especially those with incomes above 400 percent of the federal poverty level.<sup>3</sup> Taken together, these rising costs place patients

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<sup>1</sup> "Wisconsin Individual ACA Plan Rates set to Rise 36 Percent on Average in 2018," *Wisconsin Health News*, Oct. 17, 2017. <https://wisconsinhealthnews.com/2017/10/12/individual-aca-plan-rates-set-rise-36-percent-average-2018/>.

<sup>2</sup> Office of the Commissioner of Insurance, "Wisconsin 1332 Draft Waiver Application," accessed March 15, 2018 <https://oci.wi.gov/Documents/AboutOCI/WI%201332%20DRAFT%20Waiver%20Application%203%2013%2018.pdf>.

<sup>3</sup> Anna Goldman et al. "Out-of-Pocket Spending and Premium Contributions After Implementation of the Affordable Care Act," *JAMA Internal Medicine* 178, no. 3 (2018): 347-355, doi: 10.1001/jamainternmed.2017.8060.

in unconscionable positions, whereby they are rationing their own treatment and care because they don't think they can afford it.<sup>4</sup>

Lowering costs for patients can help with issues of affordability, but without adequate insurer participation patients who receive coverage from the ACA exchanges may not have adequate access to care. Reinsurance programs have been demonstrated to lower insurer risk, which can incentivize insurers to participate in the ACA marketplaces.<sup>5</sup> Further, with elimination of the individual mandate in the 2018 tax reform law, concerns have arisen regarding the stability of the ACA exchanges,<sup>6</sup> including potential bifurcation of the market with the exchanges operating as de facto high-risk pools. Primary among these concerns is that only the sickest will opt to obtain coverage creating a "death spiral" for the ACA marketplace. Reinsurance programs can guard against adverse selection concerns, and incentivize insurers to continue participating in the ACA marketplace.<sup>7</sup> By stabilizing and lowering premiums, the Wisconsin Healthcare Stability Plan could help incentivize younger, healthier patients to acquire coverage, rather than risking a potential catastrophic event.

The reinsurance structure proposed by WIHSP addresses the concerns of affordability and access, and will help reduce the financial burden on patients through lowered premiums. Further, the proposal maintains existing patient protections and guarantees that patients will have access to an adequate range of services, which the Society also supports.

As physicians we play a central role in the health of Wisconsin's patients and want to do everything we can ensure and promote their health and well-being. The Society looks forward towards being a partner with OCI, the Department of Health Services, and the Centers for Medicare and Medicaid Services to help ensure the 1332 waiver and subsequent reinsurance program are successful.

Sincerely,



Clyde "Bud" Chumbley, MD, CEO

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<sup>4</sup> Sarah Kliff, "Why Obamacare Enrollees Voted for Trump," Vox, Dec. 13, 2016. <https://www.vox.com/science-and-health/2016/12/13/13848794/kentucky-obamacare-trump>.

<sup>5</sup> TJ Layton et al. "Risk Corridors and Reinsurance in Health Insurance Marketplaces: Insurance for insurers," *American Journal of Health Economics* 2, no. 1 (2016): 66-95, doi: 10.1162/ajhe\_a\_00034.

<sup>6</sup> HR 1 15<sup>th</sup> Congress of the United States. Accessed March 15, 2018. <https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf>.

<sup>7</sup> JM Zhu et al. "The Power of Reinsurance in Health Insurance Exchanges to Improve the Fit of the Payment System and Reduce Incentives for Adverse Selection," *Inquiry* 50, no. 4 (2013): 255-274, doi: 10.1177/0046958014538913.

# Wisconsin Medical Society Health System Reform Objectives

The Wisconsin Medical Society has long sought to improve the health of the people of Wisconsin. This core principle will guide the Society's advocacy efforts regarding any reforms of the American health care system.

The Society prioritizes the patient-physician relationship as paramount in all health system reforms and the core component to consider when improving the broader health system. Further, the Society recognizes the essential principle of universal coverage, which can be achieved through public and/or private options for coverage. The Society is committed to improving health insurance coverage and health care access so that all patients receive timely high-quality care and all necessary treatments. In addition, our efforts will focus on making sure health care continues to be patient-centered and physician-led.

As plans develop, the Society endorses and reaffirms our four essential goals in reforming the health care system:

1. Attain universal health insurance coverage through public and private options.
2. Maintain high quality health care.
3. Manage health care costs for patients and physicians.
4. Be responsive to patient and physician well-being and physician sustainability in the workforce.

The Society also supports efforts to improve health plan transparency for patients and physicians including ensuring that provider directories are accurate, complete and up-to-date; requiring health plans to inform physicians of criteria to participate in provider networks; and promoting fair health plan contracting practices. The Society will advocate for the provision of additional protections for patients who are forced to seek care out-of-network. The Society also supports state network adequacy thresholds that ensure provider networks maintain and improve upon existing thresholds to include a full range of primary, specialty and subspecialty providers for children and adults, so that health insurance coverage translates to patients having access to the care and providers they need and respects historical patterns of care.

In addition, any health system reform should maintain existing patient protections such as:

1. Guaranteed coverage for individuals with preexisting conditions within the context of requiring individual responsibility, including maintaining community rating provisions.
2. Coverage on parent's health insurance plans until age 26.
3. Using refundable and advanceable tax credits that are inversely related to income.
4. Ban on lifetime caps.

In order to ensure that patients get the best quality care possible, any health system reform should ensure that:

1. Health plan coverage is at least as adequate as stipulated by the Affordable Care Act (ACA), as codified in 42 U.S.C. 18001 as of December 1, 2017.
2. Adequate health plan coverage is at least as affordable as the ACA, as codified in 42 U.S.C. 18001 as of December 1, 2017.
3. Regulatory burdens on physicians are reduced through all systems of care.



4. Selling insurance across state lines must not undermine a state's authority to regulate its own insurance marketplace(s).
5. Wisconsin's relatively healthy medical liability climate is maintained.
6. Prescription drug price and cost transparency among pharmaceutical companies, pharmacy benefit managers and health insurance companies is encouraged.
7. Coverage for mental health and addiction care has full parity with general medical care.
8. States have adequate flexibility to tailor their health system infrastructure to their unique needs.

Any reforms to Medicaid and Medicare should ensure that:

1. Medicaid is adequately funded and is sustainable for patients, physicians and states.
2. Groups currently covered by Medicare and Medicaid don't lose coverage without gaining coverage that is at least as adequate and affordable as their existing coverage.
3. Medicaid funding must treat states equitably.
4. Medicaid and Medicare programs are viable and effective mechanisms to provide health insurance coverage to low-income individuals, seniors and the disabled.
5. Graduate medical education funding continues to be supported by the Medicare program and the State of Wisconsin, consistent with the extensive, longstanding policy, and also including the reduction/elimination of residency caps.
6. Increased flexibility for states resulting from changes to entitlements, or the restructuring of grants and waivers, result in improved efficiencies for Wisconsin's Medicaid programs.
7. Changes to financing structures and/or coverage requirements should not disadvantage physicians and health systems that often serve as a safety net in their communities for those with little or no health insurance.
8. Long-term, full funding for federally qualified health centers to serve high need areas at existing levels.

It will be critical that patients, physicians and states have a real transition period before new reforms are implemented as quick and rash actions can have unforeseen consequences. The Society will continue to be an active and engaged partner in improving health care for all patients and will collaborate with all interested parties to create a better health care system.

*Approved by the Board of Directors on January 27, 2018*



## Stegall, Jennifer - OCI

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**From:** OCI 1332 Waiver Comments  
**Sent:** Wednesday, April 04, 2018 2:14 PM  
**To:** Gerry Paul (x5349)  
**Subject:** RE: Written comments on the OCI 1332

Dear Gerry

Thanks for your note and inquiry.

In short, the Health Care Stability Program will lower the insurance rates in the individual market. For folks between 100% and 400% of the federal poverty level, the lower rates will mean the federal government will pay less for health insurance (since the premium the consumer pays stays the same regardless of how high the premiums go, the federal government just picks up the difference between the consumer portion and the actual rate). For those over 400% of poverty, the lower insurance rates mean just that, you will pay less than you otherwise would have for health insurance.

The health care stability plan is anticipated to reduce health insurance premiums by 10% for plan year 2019, from what they would have been without the reinsurance plan in place. Given the cost of medical care and the dynamics of the federal Affordable Care Act (ACA), it is anticipated health insurance rates will continue to increase; however, the reinsurance plan will hold down those increases. The impact on health insurance premiums applies to the entire individual health insurance market, meaning, premiums for plans offered on and off the Exchange will be lower than what they would have been.

We have a great deal on our website, but this is a presentation we have been giving covering some of the details:

<https://oci.wi.gov/Documents/AboutOCI/Wisconsin%20Healthcare%20Stability%20Plan%20-%20FINAL%20public%20pp.pdf>

You also asked what is the federal poverty rate. Below is some information from federal government website defining and explaining:

<https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>  
(from the website)

The 2018 federal poverty level (FPL) income numbers below are used to calculate eligibility for Medicaid and the Children's Health Insurance Program (CHIP). 2017 numbers are slightly lower, and are used to calculate savings on Marketplace insurance plans for 2018.

\$12,140 for individuals  
\$16,460 for a family of 2  
\$20,780 for a family of 3  
\$25,100 for a family of 4  
\$29,420 for a family of 5  
\$33,740 for a family of 6  
\$38,060 for a family of 7  
\$42,380 for a family of 8

To get to 400% of poverty, you would simply multiply any of those numbers (based on the family size) by 4.

If you have any additional questions or comments, please feel free to reach out.

J.P. Wieske  
Deputy Commissioner  
Office of the Commissioner of Insurance  
[jp.wieske@wisconsin.gov](mailto:jp.wieske@wisconsin.gov)  
(608) 266-2493



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**From:** Gerry Paul (x5349) [<mailto:GPaul@littlerapids.com>]  
**Sent:** Wednesday, March 21, 2018 7:09 AM  
**To:** OCI 1332 Waiver Comments  
**Subject:** Written comments on the OCI 1332

What will this new program do for applicants who are over 400% of Federal Poverty Level?

What is the federal poverty level?

Thank you,

Gerry Paul  
Whitelaw, WI

## Stegall, Jennifer - OCI

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**From:** Douglas James Smith <dsmith42@wisc.edu>  
**Sent:** Monday, April 09, 2018 8:14 PM  
**To:** OCI 1332 Waiver Comments  
**Subject:** Comments

- "If the Governor really wanted to stabilize health care he could expand BadgerCare, which would cover nearly 80,000 more people and saving the state \$190 million per year. He could use those savings to fund his reinsurance plan, increase provider reimbursement rates, or fund more sensible plans to reduce health care costs for Wisconsinites."
- The governor needs to include consumer protections in his waiver request.

Thank you,

*Douglas Smith*  
*Master of Social Work | University of Wisconsin-Madison 2016*  
414-416-2508 | [dougjamesmith@gmail.com](mailto:dougjamesmith@gmail.com)

Sent from my iPhone

*Douglas Smith*  
*Master of Social Work | University of Wisconsin-Madison 2016*  
414-416-2508 | [dougjamesmith@gmail.com](mailto:dougjamesmith@gmail.com)

Sent from my iPhone



**Stegall, Jennifer - OCI**

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**From:** Mark Geissler <geissm52@gmail.com>  
**Sent:** Tuesday, April 10, 2018 10:52 AM  
**To:** OCI 1332 Waiver Comments  
**Subject:** Wisconsin Health Care Stability Plan

**Governor Walker,  
Include consumer protections to his healthcare stability plans by mandating that savings are passed on to consumers and funding for his plan shouldn't come from our state's Medicaid budget.**

**Mark Geissler**



April 13, 2018

JP Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
125 South Webster Street  
Madison, WI 53703  
[OCI1332WaiverComments@wisconsin.gov](mailto:OCI1332WaiverComments@wisconsin.gov)  
*Submitted Electronically*

Re: Proposed Section 1332 Waiver to Create Wisconsin State Reinsurance Program

Dear Mr. Wieske:

Thank you for the opportunity to comment on the Office of the Commissioner of Insurance's draft request for a Section 1332 Waiver for State Innovation to create a state health care reinsurance plan.

The Wisconsin Alliance for Women's Health's (WAWH) vision for Wisconsin is to be an environment in which all women, at every stage of life, can realize their optimal health and well-being. In order to help make this vision a reality, we advocate for public policies that promote women's health, economic security, and safety. Ensuring that women and their families have access to affordable, comprehensive, and quality health care is a core policy goal of our organization.

As a longtime supporter of the Affordable Care Act (ACA), WAWH certainly shares OCI's goal of improving the ACA Marketplace for Wisconsinites who rely on the Marketplace for health insurance coverage. While the ACA was a tremendous step forward to improving meaningful access to health care for millions of Americans, WAWH believes that there are still important ways in which state and federal policymakers can build upon and improve this landmark policy achievement.

However, we believe that the substantive provisions of OCI's waiver request will do little to achieve the admirable goal of improving the Marketplace for Wisconsin consumers. Even more important than our belief that this request will largely be ineffectual in attaining its purported goals, we are concerned that this proposal may cause actual harm to low-income and vulnerable individuals if the state uses Medicaid funding to finance the proposed reinsurance plan.

While OCI projects that its proposed reinsurance program will reduce health insurance premiums for Marketplace plans by approximately 10 percent<sup>1</sup>, relatively few people will benefit from this premium reduction. It is projected that enrollment in Marketplace plans is projected to increase by less than one percent. To put this benefit to Wisconsin consumers in perspective, according to the Center for Medicare and Medicaid Services (CMS)<sup>2</sup>, only approximately 36,000 of the 225,000 or so Wisconsin Marketplace participants do not qualify for Advance Premium Tax Credits under the ACA and thus could directly benefit from reinsurance. This seems like a low return on investment for what is projected to be a minimum \$300 million expenditure of state funds over the next 10 years to fund this proposal.

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<sup>1</sup> <https://oci.wi.gov/Documents/AboutOCI/WI%201332%20DRAFT%20Waiver%20Application%203%2013%2018.pdf>

<sup>2</sup> See CMS HEALTH INSURANCE EXCHANGES 2018 OPEN ENROLLMENT PERIOD FINAL REPORT at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2018-Fact-sheets-items/2018-04-03.html>

More importantly than the limited scope of the potential benefits of this proposal, the waiver request contains no language that would ensure that any savings created by the plan will accrue to the benefit of health care insurance consumers, thus it is unlikely that this proposal will defray the costs associated with the higher deductibles or copays faced by many Marketplace consumers.

More troubling than the limited benefits of OCI's proposal, WAWH is greatly concerned that the state may try to fund its \$30 million per year contribution to the program from the state Medicaid program. While no state funding source is specified in OCI's proposal, supporters of the waiver request's enabling legislation indicated that the state's funding obligation would come from savings to the state's Medicaid program, which may prove to be temporary<sup>3</sup>. WAWH is adamantly opposed to any state Medicaid money funding this proposed reinsurance program, as this would represent a transfer of resources from a program that provides health care to low-income and vulnerable individuals to an inefficient plan to reduce health care costs for more financially stable people. WAWH respectfully requests that OCI clearly identify the funding source for its proposed reinsurance plan and unequivocally state that Medicaid funds or other support programs for low-income or vulnerable individuals will not be used to fund this plan.

WAWH would consider supporting a state health care reinsurance proposal that (1) ensured that savings from any plan are passed on to consumers to reduce their health care costs and (2) explicitly states that none of the state funding for the proposal will be financed by Medicaid or other social safety net programs. Because OCI's current waiver request does not address either of these concerns, we must oppose this proposal.

Thank you for taking the time to consider our comments and concerns regarding this proposal.

Sincerely,

Sara Finger  
Executive Director  
Wisconsin Alliance for Women's Health

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<sup>3</sup> <https://www.jsonline.com/story/news/politics/2018/02/13/scott-walkers-200-m-plan-hold-down-obamacare-premiums-get-key-vote/330999002/>



April 12, 2018

JP Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
125 South Webster Street  
Madison, WI 53703

Dear Mr. Wieske:

RE: Proposed 1332 Waiver for State Innovation

Thank you for the opportunity to share our comments on the draft request for a 1332 State Innovation Waiver to develop and operate a state-based reinsurance plan.

For over a century, Kids Forward – a private, non-partisan, non-profit – has focused on improving conditions for families and children through policy change, expanded public investments and public education that lead to improvements in outcomes and practices in the delivery of publicly funded health care, education, workforce development and social services. We seek to inspire action and promote access to opportunity for every kid, every family, and every community. Kids Forward advocates for effective, long-lasting solutions that break down barriers to success for children and families in Wisconsin.

As an organization that works to help increase access to health insurance for low-income families and children, we have serious concerns about the rising costs of health care and health insurance. While we support the goal of shoring up the Affordable Care Act Marketplace, we're concerned that this proposal could shift resources away from vulnerable Wisconsinites served by Medicaid, while benefiting relatively few, if any, Marketplace participants, and while failing to address the cost drivers of health care.

The state is proposing using at least \$30 million per year of state funding to help cover insurance companies' costs for high-cost claims for people insured through the ACA Marketplace. Kids Forward has a number of concerns regarding the state's creation and operation of a reinsurance program that should be addressed prior to submitting its application to the federal government for approval.

- Reinsurance is projected to provide a modest benefit to relatively few people who purchase insurance through the ACA.
- There is no clear funding source for the state's \$30 million annual portion. More troubling still, proponents have asserted that reinsurance will be funded out of the Medicaid budget.
- There is no mandate that savings will be passed on to consumers.
- The goal of using reinsurance to mitigate premium increases will fail if state and federal officials continue to take steps that sabotage the ACA Marketplace.

The reinsurance program is projected to lower premiums by 10 percent, but will only directly benefit the relatively few people who do not receive premium tax credits. Through the life of the waiver, that savings will be further reduced to 6.5 percent. The Center for Medicaid and Medicare Services projects health spending to rise by 5.5 percent per year<sup>1</sup>, which will likely negate any savings generated through a reinsurance program.

A strong majority of people who purchase health insurance through the ACA receive tax credits to help pay their insurance premiums. These people will see their tax credit decrease in step with any reductions in their premiums, and won't see any direct benefit. During the 2018 open enrollment period about 225,000 people signed up for coverage through the ACA, and only 16% of those people are ineligible for premium tax credits. That's about 35,000 people who could possibly directly benefit from reinsurance<sup>2</sup>.

The proposal estimates that reinsurance will result in an increase of less than 1 percent in the number of people purchasing insurance, which is less than 500 additional people. In 2016, when the federal government's transitional reinsurance program was active, there were approximately 38,000 people in Wisconsin's Marketplace who did not receive tax credits. However, there were more people in the marketplace overall. In fact, the same percentage of consumers in 2016 and 2018 were ineligible to receive subsidies<sup>3</sup>. This suggests that reinsurance programs are unlikely to substantially increase enrollment or broaden the risk pool. Despite these facts, over the course of the next decade Wisconsin is committing to spend at least \$300 million of state revenue to modestly help this small group of people with above average incomes.

Wisconsin anticipates contributing at least \$30 million annually to fund its reinsurance program, but provides no clarity from where it will take those funds. Proponents of the waiver have indicated that the funding could come from savings from the Medicaid budget, but could not provide specific detail. Even if there is a surplus during this biennium, it is no guarantee that we will have one in future budget cycles. Funding for this program, which will benefit relatively few, relatively financially stable people should not come from the Medicaid program. The waiver application should clearly show the state's income source and not risk taking funds from BadgerCare, Family Care, SeniorCare, IRIS, CCS, or any of the other programs that support low-income children and families, people with disabilities, and senior citizens.

The actuarial analysis included with the waiver application indicates that, at best, consumers could see a 10 percent decrease in premiums, but this program will not address the underlying cost-drivers of health care, or lower deductibles and other out-of-pocket costs that create barriers for people accessing the care they need. Those with pre-existing conditions, disabilities, and other complex health needs are more likely to be disproportionately impacted by rising health care costs, and this program will do very little to alleviate their cost burdens.

Reinsurance protects insurance companies them from very high-cost claims, thereby resulting in less risk and lower costs for those companies. In theory this approach could modestly lower premiums if all of those savings were passed on to consumers. However, the state does not mandate that insurers pass on those savings to consumers. Insurance companies could offer plans with lower premiums, but higher deductibles and copays, which would disproportionately impact people most likely to use their health insurance. Federal deregulation of insurance companies and weakening of consumer protections makes this more likely. The proposal does nothing to prevent this practice.

The reinsurance program may result in modest savings to a small share of Wisconsinites, but it hardly mitigates the damage caused by the many acts of federal sabotage, which have resulted in significantly higher premiums and fewer choices for consumers. The Trump administration's refusal to honor the government's commitment to fund cost-sharing reductions resulted in an average 36 percent increase in premiums in Wisconsin.<sup>4</sup> Repealing the penalty for individuals who do not purchase health insurance will result in even higher premiums and a shrinking risk pool. In this broader context, Wisconsin needs to do far more to help stabilize the individual marketplace if it wants to protect consumers.

The Trump administration and Wisconsin legislature have proposed changes that will further weaken the ACA by allowing people to buy skimpier health plans that do not provide comprehensive health coverage. Younger, healthier people will disproportionately choose these cheaper, less generous plans and leave the marketplace. The result will be an ACA marketplace with a smaller, sicker risk pool, which will continue to drive up costs. Reinsurance does not adequately address these concerns. The Health Care Stability Plan is likely to be too little too late, and at a significant cost.

If Wisconsin policymakers want to strengthen the ACA and lower costs for people purchasing health coverage through the Marketplace, they should fund outreach and enrollment assisters, lengthen the open enrollment period, and first and foremost expand BadgerCare to provide nearly 80,000 people with cost-effective insurance coverage. Expanding BadgerCare will save the state nearly \$190 million per year. The state could use those savings to cover the costs of a reinsurance program targeted to provide modest financial relief for the relatively few people who make too much to qualify for premium tax credits.

To sum up, we support the goal of stabilizing the ACA Marketplace and making it more affordable for state residents, including those who are ineligible for federal subsidies, but we do not support the waiver in its current form. We would put our support behind a 1332 waiver to establish a reinsurance program if we had confidence that it won't be financed by making cuts to Medicaid, and if the waiver required insurance companies to pass on the savings to consumers. We would also be far more willing to back the program if Wisconsin officials show that they are making a good faith effort to stabilize the ACA Marketplace, rather than taking actions that undercut the Marketplace and pose a threat to the continuation of affordable coverage for people with preexisting conditions.

Thank you for your consideration of our concerns.

Jon Peacock  
Research Director  
Kids Forward

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<sup>1</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf>

<sup>2</sup> Health Insurance Exchanges 2018 Open Enrollment Period Final Report, state-level public use file.  
[https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018\\_Open\\_Enrollment.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html)

<sup>3</sup> <https://aspe.hhs.gov/health-insurance-marketplaces-2016-open-enrollment-period-final-enrollment-report>

<sup>4</sup> <https://www.wpr.org/36-percent-average-jump-aca-premiums-coming-wisconsin>



WISCONSIN BOARD FOR PEOPLE  
WITH DEVELOPMENTAL DISABILITIES

April 9, 2018

Wisconsin Office of the Commissioner on Insurance

Re: Proposed 1332 waiver

To Whom It May Concern:

Thank you for the opportunity to comment on Wisconsin's proposed Affordable Care Act (ACA) 1332 waiver. The Wisconsin Board for People with Developmental Disabilities (BPDD) finds that the proposed waiver is unlikely to result in meaningful and lasting financial relief for consumers, does not address health care cost drivers, and may result in disproportionately higher out of pocket costs for consumers with disabilities and consumers with family members with disabilities.

Consumers with disabilities, pre-existing conditions, chronic health care conditions, and those with family members with disabilities are Wisconsin ACA marketplace consumers. These populations of people tend to use health care services and spend more on health care because of their conditions.

Out of Wisconsin's 225,000 marketplace plans purchased in 2018, only 36,000 (16%) fit the criteria of the population targeted by Wisconsin's \$200M reinsurance proposal<sup>1</sup>. Of those 36,000 higher income consumers, those who utilize health care the least will benefit the most. 84% of Wisconsin ACA marketplace consumers already qualify for subsidies.

At its best estimate the \$200M reinsurance program may reduce overall marketplace premiums for all consumers by 10%. When estimates of premium reductions are considered over a ten-year period, the savings estimate is reduced to 6%. The Center for Medicaid and Medicare Services (CMS) projects national health spending to grow at an average rate of 5.5 percent per year for 2017-26<sup>2</sup>. Any reductions in premiums are likely to be negated by rising health care costs. Even if premiums are marginally lower, consumers will pay more; reinsurance does not address rising health care costs as a whole or consumer costs associated with deductibles, co-insurance, co-pays or other mechanisms which pass part of the total costs of covered benefits to consumers.

Consumers with disabilities, pre-existing conditions, and chronic health conditions who do not qualify for subsidies and who need to utilize health care services will be disproportionately affected, as these populations are likely to reach their out of pocket deductible faster and will continue to incur co-insurance and co-pay costs after their deductible has been met. The affordability of health insurance and health care will continue to rapidly decline for all consumers who use health services, and especially for those who need to access more services. Wisconsin's proposed 1332 waiver does nothing to address these issues.

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<sup>1</sup> The target population of the reinsurance program are Wisconsin marketplace consumers who have incomes that exceed the level that qualifies for government subsidies under the Affordable Care Act (those with incomes of more than \$98,000 per year who do not have employer sponsored insurance).

<sup>2</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>

Moreover, the repeal of the requirement for people to have health insurance (individual mandate) as well as recent changes and proposed changes to federal administrative rules are projected to weaken the overall marketplace risk pool. Younger, healthier people are more likely to forgo purchasing health insurance entirely, thereby removing themselves from the risk pool. The allowance of Association Health Plans (AHPs) and Short-Term Health Plans—which do not have to comply with ACA standards, required essential health benefit coverage, and consumer protection requirements—may syphon younger, healthier individuals away from ACA compliant marketplace plans leading to exponentially increasing costs for people with disabilities and chronic conditions who must remain in ACA regulated markets<sup>3</sup> to obtain the care they need. When people leave ACA compliant marketplace plans for cheaper lower coverage plans or choose to go uninsured, ACA marketplace premiums will increase, negating and reversing the small impact Wisconsin's reinsurance plans will have on consumer premiums<sup>4</sup>.

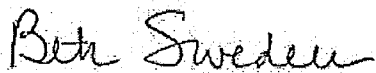
Even small changes to the overall risk pool call into question the deficit neutrality of the 1332 waiver proposal and will certainly result in higher out of pocket costs for ACA marketplace consumers, especially consumers with disabilities and chronic health conditions. Wisconsin's 1332 waiver program would be of diminishing return as premiums, health care costs, and out of pocket expenses required of consumers continue to rise.

It is unclear—if the 1332 waiver is approved—what the funding source will be for the \$30M per year cost to operate the program over the next ten years. BPDD understands that the current proposed funding source is General Purpose Revenue (GPR), however it is uncertain whether revenue projections will be sufficient to cover \$60M in reinsurance funding over the next biennium (much less the next four biennium state budgets. A surplus or lapse in one year does not translate to the same amount being available in future years.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,



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<sup>3</sup> Both AHPs and Short-Term plans can reject people with pre-existing medical conditions or charge higher prices for people with pre-existing conditions, and neither are required to cover the ten essential health benefits required under the ACA.

<sup>4</sup> A February 2018 Avalere study projected that changes to regulation of AHPs would prompt 4.3 million people to leave ACA compliant marketplace plans for cheaper and lower coverage AHPs over the next five years, resulting in a 4% premium increase for individuals in marketplace plans, with an additional 140,000 estimated to lose health care coverage altogether. A March 2018 Urban Institute analysis found that short-term health plans are projected to remove 4.3 million people from the ACA compliant marketplace; the same study projected an additional 6.4 million people would choose to go uninsured by 2019. The combined impact of the increasing uninsured population and people moving to just the short-term insurance market is projected to result an 18.3% increase in ACA compliance insurance premiums in 2019.



Beth Swedeon, Executive Director  
Wisconsin Board for People with Developmental Disabilities

## Stegall, Jennifer - OCI

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**From:** OCI 1332 Waiver Comments  
**Sent:** Wednesday, April 18, 2018 9:15 AM  
**To:** Jackson, Tamara - BPDD; OCI 1332 Waiver Comments  
**Cc:** Swedeen, Beth - BPDD  
**Subject:** RE: BPDD: Public Comments on 1332 waiver  
**Attachments:** Swedeen letter 4 18 18.pdf

Good Morning,

Please find attached a response from Deputy Commissioner J.P. Wieske.

Thank you,

Jennifer Stegall  
Executive Senior Policy Advisor  
Office of the Commissioner of Insurance  
608-267-7911

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**From:** Jackson, Tamara - BPDD  
**Sent:** Thursday, April 12, 2018 3:01 PM  
**To:** OCI 1332 Waiver Comments  
**Cc:** Swedeen, Beth - BPDD  
**Subject:** BPDD: Public Comments on 1332 waiver

Hello,

I have attached the Wisconsin Board for People with Developmental Disabilities' public comments on the proposed 1332 waiver.

Thank you,

***Tami Jackson***

Wisconsin Board for People with Developmental Disabilities (BPDD)  
Public Policy Analyst and Legislative Liaison

(608) 266-0979 (office)  
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Follow me on Facebook for coverage of public policy issues affecting people with disabilities  
<https://www.facebook.com/tamarajacksonBPDD>



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

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April 18, 2018

Beth Swedeen, Executive Director  
Wisconsin Board for People with Developmental Disabilities  
101 East Wilson Street, Room 219  
Madison, WI 53703

Dear Ms. Swedeen,

Thank you for your letter commenting on the proposed 1332 waiver application. As you know, we have had more than seven public hearings and have met individually with groups requesting more information. Unfortunately, your comment letter is confusing because it asks to address points which have nothing to do with the proposed 1332 Waiver. OCI will respond to a number of common issues through our general responses, but a few issues require a tailored response.

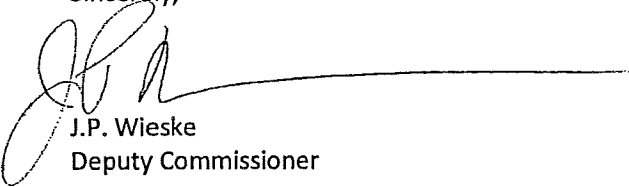
The individual market as a whole serves the most vulnerable of Wisconsin consumers. These are individuals who do not have access to any other coverage, including BadgerCare, Medicare, or employer sponsored coverage. It is important to Wisconsin consumers of all income levels to stabilize the Wisconsin insurance market. In areas across the state, consumers have lost access to insurers. In 2018 alone, 75,000 Wisconsinites lost their individual market coverage – regardless of their subsidy level. We have seen numerous insurers leave the individual market. In areas across the state, consumers – regardless of health status – now have fewer choices and in some areas have no choice.

This issue disproportionately harms those with significant medical conditions. As consumers lose choice, they lose access to their choice of medical providers. Even worse, with only one carrier available in much of the state, those consumers could have faced a market without an insurer. Governor Walker's Healthcare Stability Plan (WIHSP) is not a panacea, but it does seek to stabilize the individual market in Wisconsin. In the absence of action at the federal level, Wisconsin needed to do what it could to keep the individual market viable. This is why the American Cancer Society and Multiple Sclerosis Society both supported the waiver as well as doctors, hospitals, and insurers.

Your comment letter spends a great deal of time concerning the rising out-of-pocket medical costs for those with disabilities and the impact of the individual mandate. We understand those concerns but out-of-pocket costs have nothing to do with this proposed 1332 Waiver and neither does the repeal of the individual mandate penalty passed by Congress. Indeed, the actuarial analysis on our website shows that the WIHSP will increase enrollment which will help broaden the risk pool.

Our office has been regulating insurance since 1871. We engaged the public on the 1332 waiver application through the legislative process followed by seven public hearings to understand concerns. We have provided a plethora of information on our website about WIHSP. With the Governor's leadership, we felt the need to protect consumers who were facing a collapsing individual market. We simply do not agree the best option was to do nothing.

Sincerely,

A handwritten signature in black ink, appearing to be 'J.P. Wieske', followed by a long horizontal line extending to the right.

J.P. Wieske  
Deputy Commissioner



April 13, 2018

JP Wieske, Deputy Commissioner  
Wisconsin Office of the Commissioner of Insurance  
PO Box 7873  
Madison, WI 53707-7873  
[OCI1332WaiverComments@wisconsin.gov](mailto:OCI1332WaiverComments@wisconsin.gov)

RE: ABC for Health, Inc.'s comment on Wisconsin's Section 1332 State Innovation Waiver Request Regarding a State Reinsurance Program

Dear Deputy Commissioner Wieske –

Thank you for the opportunity to provide comment on Wisconsin's Section 1332 Waiver Request. Advocacy and Benefits Counseling for Health, Inc. (ABC for Health) helps low-income, health disparity populations obtain access to both health care and coverage in Wisconsin. ABC for Health's mission is to provide consumers and providers with information, advocacy tools, legal services, and expert support they need to secure health care coverage and services. We translate individual client case experiences into local strategies as well as system level reforms through our statewide HealthWatch Wisconsin subsidiary, which serves as a catalyst in the development of local HealthWatch Coalitions to promote community efforts and community voices directed at health care coverage and access concerns for children and families.

The Affordable Care Act envisioned reinsurance as a way to stabilize the individual insurance market as individuals with preexisting conditions entered the market for the first time without discrimination. Reinsurance stabilized markets for insurance companies carrying higher risk, or with underpriced monthly premiums, in a temporary, three-year program. Reinsurance provided a glide path for insurance companies to evaluate price plans and remain competitive in the expanded individual policy market. That program, however, only succeeded in compensating insurers for about half the claims expenses of high-cost enrollees. The original ACA legislation grossly underestimated the amount of funding necessary to keep up with high-cost claims in the Marketplace's second year, and subsequent challenges by Republican opponents, including Governor Walker, limited the federal government's ability to pay out fund contributions.

With the draft waiver, Governor Scott Walker changes course and pivots toward the ACA and the reinsurance concept. The plan, approved by the legislature, includes a request for federal and state funding for a state operated reinsurance program that would partially reimburse individual health insurance plans for claims paid on behalf of their highest cost enrollees.

In substance, the plan mirrors programs enacted in other states, including Minnesota, Alaska, and Oregon. Wisconsin's proposal asks the US Treasury and US Department of Health and Human Services (HHS) to waive section 1312(c)1 under Sec. 1332 of the ACA for 5 years (starting in 2019) to implement the "WI Healthcare Stability Plan" (WIHSP). The Office of the Commissioner of Insurance (OCI) will administer this state-based reinsurance program upon federal approval. OCI is responsible for WIHSP operations, including setting the attachment point, reinsurance cap, and



coinsurance amounts. Wisconsin seeks approximately \$170 million in federal pass through dollars for Wisconsin's reinsurance program. The state would contribute the balance.

The waiver language blames the existing premium increases in Wisconsin's individual insurance market almost exclusively on the "failing" of the ACA, looking backward with rose-colored glasses on the pre-ACA market in Wisconsin, citing a time when there was "more competition" in the marketplace. Yet, upon scrutiny, the past also lacked Medical Loss Ratios, essential health benefits, individual mandate, or other consumer-level protections. In reality, the small group market was collapsing under the weight of its own inefficiencies.

Marketplaces in Wisconsin evolved after ACA implementation, more specifically, after the implementation of HealthCare.gov in 2013. Market forces cause inefficient insurers, unable to meet the stricter Medical Loss Ratio requirements to close.<sup>1</sup> Strong political opposition from state and federal policymakers barraged markets, as did continued high-stakes constitutional or other ACA legal challenges, some of which Wisconsin spearheaded. State and federal regulators extended ability of certain health plans to remain exempt from the ACA's insurance reforms. In addition, states were left with insufficient funding for consumer outreach and assistance or like Wisconsin, rejected already awarded consumer assistance funding and sent it back to Washington,<sup>2</sup> harming consumers, the operation of OCI, and ultimately enrollment and stability in the markets. For these and other reasons, enrollment growth slowed and premiums increased.

While ABC generally recognizes reinsurance programs as a useful tool, especially in risky insurance markets, Wisconsin's proposed waiver request generates three major concerns: 1) lack of sufficient consumer protections; 2) troubling funding mechanisms; and 3) insufficient impact in the context of recent state and federal policy.

### **Consumer Protection**

Wisconsin should take proactive steps to support enhanced consumer protections in the private insurance market, and promote increased growth of risk pools and plan enrollment. Wisconsin could expand public-private partnership coverage options like BadgerCare Plus, that promote large-scale

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<sup>1</sup> Recall at the time, companies like American Republic Insurance and World Insurance Company were at 68% and 65% Medical Loss Ratios, respectively. Commissioner Nickel went so far as to request a waiver of the medical loss ratio requirements of the ACA, in an obvious effort to help support these failing small group market plans. OCI claimed Wisconsin's insurance market could not operate with requirements that limits health insurer profits, salaries, marketing, and other overhead costs to 20% of the amount spent by consumers in the individual market. OCI rejected the idea of streamlined administration of insurance plans and a more competitive marketplace, instead preferring to have consumers cover the cost.

<sup>2</sup> On February 10, 2011, then new Commissioner of Insurance, Ted Nickel terminated Wisconsin's federally funded consumer assistance program. The majority of the \$637,114 grant to Wisconsin went to the Office of the Insurance Commissioner. The purpose of the program, supported by a U.S. Department of Health and Human Services Consumer Assistance Grant, was to "educate consumers about their health coverage options, empower consumers, and ensure access to accurate information." See also, "New state insurance commissioner terminates \$637K federal health care grant," Feb. 10, 2011, WI State Journal, *available at*:

[http://host.madison.com/wsj/news/local/health\\_med\\_fit/article\\_dd894d62-3572-11e0-a002-001cc4c002e0.html](http://host.madison.com/wsj/news/local/health_med_fit/article_dd894d62-3572-11e0-a002-001cc4c002e0.html)



pooling, spread risk, create financial leverage, and promote consumer protection and health plan accountability.

Most fundamentally, Wisconsin's draft waiver (the language in Act 138) provides no guarantee that any reinsurance payment made to Wisconsin insurers will translate into reduced premiums for consumers.

OCI estimates the waiver's impact to include premium decreases of approximately 10% for 2019. Lowering premiums is an important goal, but consumers should bear some of the fruit of that reduction. As such, the waiver must also require insurance companies to pass on the savings to the consumer as a condition of receiving WIHSP payments. Otherwise, WIHSP risks simply subsidizing insurance companies who could otherwise "justify" accepting reinsurance payments while subsequently increasing premiums or out of pocket costs to high cost consumers, or both.

OCI's role will be an important one, when paired with OCI's duty to administer a fully transparent rate review process in Wisconsin. We would expect OCI to administer a strict rate review process for those insurers receiving reinsurance payments. The language in Act 138 stops short of any such guarantee. Ch. 601.83(1)(e) requires eligible health carriers to "calculate the rates the eligible health carrier would have charged for a benefit year if the healthcare stability plan had not been established and submit the calculated rates as part of its rate filing submitted to the commissioner," for *consideration*, and nothing more. To efficiently review requests for rate increases, OCI determines the reasonableness of requests that fall into a certain "review path." Establishing a review path specific to reinsurance providers would be appropriate, and creating a heightened threshold of responsibility, expected.

For stability, reinsurance alone is not enough. Wisconsin's program effects will depend on its impact on the cost of coverage, the ability of lower premiums to attract a healthier mix of enrollees, and an overall expanded enrollment in the market to help achieve economies of scale in non-claim costs. As reported in the draft waiver request, WIHSP will help a negligible amount of people gain health insurance. OCI estimates only a 0.8% increase in enrollment after reinsurance in the short term.

Over the short and long term, Wisconsin must expand and maintain the marketplace's enrollment to include healthier and younger consumers. Moreover, Wisconsin should embrace educational campaigns and consumer outreach and assistance efforts, and even reinforce mechanisms like auto-enrollment of enrollees that do not proactively select a plan. Instead, Wisconsin is doing the opposite,<sup>3</sup> making the impact of reinsurance negligible in the broader context.

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<sup>3</sup> "Update: Wisconsin Gov. Signs Health Reinsurance Bill; State Joins 'Obamacare' Suit," Insurance Journal, Feb. 28, 2018, available at: <https://www.insurancejournal.com/news/midwest/2018/02/28/481836.htm>, saying "Walker signed the reinsurance bill less than 24 hours after Schimel joined with 19 other states in filing a federal lawsuit in Texas. The lawsuit, which Schimel led along with Texas Attorney General Ken Paxton, argues that the individual mandate is unconstitutional and that the entire law should be blocked."



Even if it is as effective as OCI predicts, at best, WIHSP will lower premiums for only a relatively small group of people, and in only small amounts. (The waiver predicts a 10% premium reduction for 2019, yet the impact over time reduces to 6.5% over the next decade). Other market instabilities will offset any reduction in premiums, discussed more below. Wisconsin had approx. 225,000 enrollees in the 2018 marketplace, the vast majority, 80% of whom are eligible to receive federal subsidies.<sup>4</sup> Approximately 30,000 are unsubsidized consumers, and the target of this reinsurance program.

The program benefits higher income consumers. Unsubsidized Marketplace customers with incomes above 400% FPL are the primary beneficiaries of the reinsurance proposal. Those people range from middle class incomes up to higher self-employed incomes. We recognize that premium support for this population is needed; however, funding \$200 million a year – over \$30 million in state money – for reinsurance to bring down premiums for this sliver of the insurance market seems wasteful and inefficient. Funding the reinsurance program with Medicaid leftovers is an upward redistribution of income, regressive and wrong. We address this more, below.

### **Funding Concerns**

Wisconsin asks the federal government to pay up to 85% of the reinsurance program, with the State paying “a sum sufficient” to cover the rest of the program. Total funding is not allowed to exceed \$200 million dollars. ABC has three concerns about how WIHSP is funded: 1) the \$200 million limit may not be enough to adequately fund a robust reinsurance program; 2) the state may be left to pay more than anticipated; and 3) the state’s funding mechanism may incentivize reducing Medical Assistance coverage to the most vulnerable.

The state seeks federal support of an 85% pass through rate of the \$200 million deemed necessary to fund the reinsurance program. State reinsurance programs (1332 waivers generally) are required to be budget-neutral to the federal government. Passing through Advance Premium Tax Credit (APTC) expenditures for reinsurance payments is how the state generates their approx. \$170 million federal savings. As such, Wisconsin’s funding request could very well fall short of required funding to support an effective reinsurance program. We need look no further than Minnesota. After devoting \$300 million in 2017, the Minnesota Legislature spent an additional \$542 million to set up a reinsurance pool for the next two years.<sup>5</sup> Should the sum not be sufficient, Act 138 allows OCI to ask Wisconsin’s Joint Finance Committee to increase the amount, most likely to come out of state dollars.

Act 138 allows OCI to simply, without a legislative process or following formal administrative rulemaking procedures, makes up its own rules. Under 601.83(3g), the Commissioner of Insurance can promulgate “any rules necessary to implement the healthcare stability plan” as “emergency rules under s. 227.24,” but “the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary...” This is an extraordinary and perhaps

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<sup>4</sup> [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018\\_Open\\_Enrollment.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html)

<sup>5</sup> Available at: <https://www.usnews.com/news/best-states/minnesota/articles/2017-09-19/apnewsbreak-reinsurance-approval-costly-for-minnesota>





impermissible grant of legislative power to the Commissioner of Insurance. OCI can promulgate emergency rules without the usual finding of emergency required under current law, and extend the reach of the Commissioner, without the legislature, to create policy. In such an instance, OCI could also draft exemptions for the insurance industry instead of waiting for the legislature to create new Wisconsin law. The waiver's broad delegation of emergency rulemaking authority to OCI may be illegal, and at the very least will further erode consumer protections.<sup>6</sup>

Furthermore, the state takes on even greater financial risks, thanks to the drafting of a "sum sufficient appropriation." Wisconsin's waiver "grants" the state the needed "flexibility" to fund the \$200 million program if the federal pass through funds differ from the anticipated amount. Recognizing that there is no guarantee the federal government's payment will cover the program's costs or that the federal government would not fully fund their "share," the waiver directs the state to fund the balance. Such a scenario is entirely possible, as federal pass through funding originates from savings in APTC. Large increase in premiums anticipated in 2019 and beyond (discussed more below) would surely mean a larger need for APTC in the Wisconsin market and fewer dollars redirected to reinsurance.

Curiously, Governor Walker rejected federal Medicaid Expansion funds for fear that the state would be left "holding the bag" for the full cost of expansion, should the feds "renege" on their funding share. Here, the statute *directs* the state to "pay the bill," should the feds not pay its share.

Similarly, Act 138 expressly prohibits the state from accepting federal Medicaid Expansion money without legislative approval. Despite the fact that if Wisconsin were to fully expand Medicaid, more than 80,000 adults between 100 and 138% FPL would be covered in BadgerCare Plus. That change would yield a net savings for state taxpayers of about \$190 million per year,<sup>7</sup> freeing up more than enough GPR to fund the state's reinsurance share – or even the entire cost of reinsurance – and dozens of other state projects and priorities.

Chapter 16.5285(3)(a) of the statute as written in Act 138 authorizes the Secretary of Health Services to transfer savings from the Medical Assistance program to the GPR. Wisconsin's funding provisions may create a perverse incentive to reduce Medical Assistance program spending in order to pay for WIHSP. As Wisconsin develops an annual Medicaid budget, it can generate larger and larger Medicaid lapse funds at the end of the fiscal year that can become a "goodie bag" fund for the

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<sup>6</sup> Also troubling, Act 138 *requires* OCI to submit a recommendation report, not an assessment, a recommendation to the Governor on requesting additional waivers. In these recommendations, OCI "shall consider and include" impacts of creating a high-risk pool or an invisible high-risk pool; funding of consumer health savings accounts; expanding consumer plan choices, including catastrophic plans or coverage and new low-cost plan options; and implementing any other approach..." [601.85(4)]. Curious how it is in the best interest of consumers that OCI should be statutorily-required to recommend a high-risk pool to the Governor.

<sup>7</sup> The Wisconsin Approach to Medicaid Expansion, Dec. 2017, Kids Forward, available at: <http://kidsforward.net/assets/Medicaid-Approach.pdf>



administration to dole out to special interests. A surplus can be generated by adding administrative hoops and hurdles in the eligibility path of people seeking or using Medicaid.<sup>8</sup>

In Wisconsin, nearly 1.2 million people rely on BadgerCare and Medicaid programs to provide essential, affordable, and effective health care services. Moreover, the impact of these programs reaches thousands more--our friends, neighbors, grandparents, colleagues, and health care providers large and small in every county of Wisconsin. The large pool of BadgerCare and Medicaid recipients provides cost effective coverage that lowers the number of uninsured and keeps people out of expensive, inefficient, and often uncompensated emergency room care. Most people realize that uncompensated care costs do not disappear but rather show up in the form of increased health care costs. Health care providers redistribute unpaid medical bills to small business, people with insurance, and other hospital patients. Lowering premiums is important, but Wisconsin should take care to ensure that marginal benefits for 30,000 higher-income Wisconsinites do not come at the expense of our most vulnerable.

In order to comply with Sec. 1332 guardrails, Wisconsin's waiver promises "comprehensive coverage," and says that the "scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted." Nevertheless, this is a promise Act 138 alone cannot make, and therefore delivers false confidence to Wisconsinites. The state has already taken other steps to reduce services for a large portion of Wisconsin's BadgerCare Plus population.<sup>9</sup>

### **Overall Impact**

In fact, Wisconsin's entire waiver request needs to be examined in the broader context of the current health care coverage landscape. A new report<sup>10</sup> paints a grim picture for premiums in the individual insurance market over the next three years. The report predicts a 15% average premium increase stemming from the repeal of the Affordable Care Act's personal responsibility tax penalty in 2019 (in the Tax Reconciliation Act signed into law December 22, 2017). In combination with Trump administration proposals to increase the availability of association health plans and short-term health plans, the authors predict overall price increases ranging between 12% and 23% in 2019 and rising to triple that amount in 2021. The highest increases are expected for states that did not pursue federal Medicaid expansion. Wisconsin joins ranks with Texas as states at "catastrophic risk" of 90% premium increases over a three-year period. Neighboring Medicaid Expansion states, such as Illinois, Indiana, and Iowa, will fare somewhat better with premium rates topping out at a 50% increase over

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<sup>8</sup> Elements of Wisconsin's still pending Sec. 1115 Demonstration waiver, including drug testing requirements, work requirements, premium requirements, etc. are anticipated to create a drop in BadgerCare Plus enrollment (as witnessed from other states such as Indiana. Similarly, Wisconsin need look no further than its own FoodShare program where work requirements caused 86,000 to drop out of the program.

<sup>9</sup> *Infra* note 8.

<sup>10</sup> "Individual Markets Nationally Face High Premium Increases in Coming Years..." Covered California, March 2018, available at: [http://hbex.coveredca.com/data-research/library/CoveredCA\\_High\\_Premium\\_Increases\\_3-8-18.pdf](http://hbex.coveredca.com/data-research/library/CoveredCA_High_Premium_Increases_3-8-18.pdf)



the next three years. However, these changes also mean 5 million people losing coverage by 2027, and insurers dropping out of the marketplace.

The nonpartisan Urban Institute<sup>11</sup> corroborates that prediction in a separate study evaluating the impact of the GOP Tax bill and federal move to allow short term insurance plans. The combined effect of eliminating the individual-mandate penalties and expanding short-term limited-duration policies would increase 2019 ACA-compliant nongroup insurance premiums 18.3% on average, and 20% in Wisconsin.<sup>12</sup>

Any reduction in premiums Wisconsin hopes to achieve with the reinsurance program will likely be offset by, and most likely obliterated by, other political decisions that dramatically increase premiums and destabilize the private insurance market, further diminishing the impact of reinsurance. We call WIHSP, “much ado about nothing.”

### **Conclusion**

Under the right circumstances, reinsurance is an effective tool to help stabilize risk and jittery insurance marketplaces. The Wisconsin approach could be drastically improved to better serve the insurance consumers of our state. Part of the blame for the unstable markets can be directed at the numerous Trump and Walker administration efforts to destabilize the ACA. Sadly, both Walker and Trump reap what they sow and we all now pay a price.

Sincerely,  
**ABC for Health, Inc.**

Bobby Peterson  
Executive Director/Public Interest Attorney  
32 N. Bassett St.  
Madison, WI 53703  
[bobbyp@safetyweb.org](mailto:bobbyp@safetyweb.org)

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<sup>11</sup> “The Potential Impact of Short-Term Limited-Duration Policies on insurance Coverage, Premiums and Federal Spending,” Urban Institute, March 2018, available at: <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>

<sup>12</sup> *Id.* at 16, Table 4 “Percent change in ACA-Compliant Premiums because of Expanded Short-Term Limited-Duration Policies and Loss of Individual Mandate, 2019.” Five states prohibit short-term limited duration policies in state law and therefore fare better in the estimated premium increases. Wisconsin has no such regulation.